



ELEMENTUS INC. MASTER SERVICES AGREEMENT
ELEMENTUS INC. ORDER FORM / ENGAGEMENT LETTER

Date Prepared: January 12, 2023

Prepared for: The Official Committee of Unsecured Creditors of BlockFi Inc.

Customer Information	
Company Name	The Official Committee of Unsecured Creditors (" <u>Customer</u> ") of BlockFi Inc. (together with its affiliates that now or hereafter may be debtors in the Cases described below, the " <u>Debtors</u> ")
Address	C / O Genova Burns LLC 110 Allen Rd., Suite 304, Basking Ridge, NJ 07920
Primary Customer Contact	

Term	
Start Date	Effective Date (defined below)
Initial Term Length	From the Effective Date until dissolution of the Customer or the bankruptcy case (the " <u>Case</u> ") is otherwise terminated (the " <u>Term</u> ")

Elementus Inc. ("Elementus") is pleased to submit this Engagement Letter for the Official Committee of Unsecured Creditors of BlockFi Inc.

Elementus Scope of Work

Elementus is a data-first blockchain intelligence and forensics company. Our industry-leading proprietary technology is backed by the most comprehensive mapping of public blockchains. Elementus' team of data scientists and blockchain experts will provide forensic services that trace the flow of funds and provide a detailed accounting of transaction activity that occurred on-chain. Elementus will be conducting an objective accounting of what occurred on-chain. Blockchains are inherently independently verifiable.

Deliverables for the project are as follows:

1. Provide advisory services with respect to on-chain flow of funds and Debtors' on-chain posture.
2. Assistance with mapping Debtors' entities on-chain.
3. Assistance with mapping Debtors' counterparties and related parties on-chain.
4. Assistance with tracing the flow of funds between Debtors and counterparties.
5. Assistance with providing a reconciliation of all Debtors' transactions on-chain.
6. As required, assistance with producing written reports and materials to illustrate and support on-chain findings.
7. Attendance at meetings and assistance in discussions with stakeholders and other third parties, as requested.

8. Render such other general business consulting or such other assistance as the Customer or its counsel may deem necessary and as is ancillary to the services described above.
9. Produce a report, or periodic reports, for use by the Committee or release to the interested parties for transparency.
10. Such other assistance as Elementus and the Customer shall mutually agree in writing.

Platform Services and Fees
Professional Services

Professional Services	Professional	Hourly Rate
	Chief Data Scientist, CEO	\$1000
	Senior Data Scientist	\$800 - \$900
	Junior Data Scientist	\$600 - \$800
	Vice President	\$700 - \$800
	Senior Software Engineer	\$800 - \$900
	Junior Software Engineer	\$600 - \$800
	Project Manager	\$500 - \$600
	Time & Materials: Elementus may charge for reasonable time and reasonable, documented, out-of-pocket expenses for materials including computing services, software licenses, and other expenses relating to the investigation.	

Payment Terms

Payments Terms	The Debtors shall pay the Fees and expenses for materials set forth above and the expenses in § 4.3 of the Terms and Conditions on a monthly basis, but subject to the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the local rules of the Court, and pursuant to any additional procedures that may be established by the Court specifically for this matter. The foregoing supersede § 4 of the Terms and Conditions to the extent of any conflict.
Indemnification	Customer's obligations under § 8.2 of the Terms and Conditions will solely be the obligation of the Debtors and Customer shall have no obligation thereunder. The foregoing supersedes § 8.2 of the Terms and Conditions to the extent of any conflict.

This Master Services Agreement ("Agreement") by and between Elementus Inc., a Delaware corporation, located at 347 Fifth Ave, Suite 1402-337, New York, NY 10016 ("Elementus"), and the Customer is made and entered into as of January [___], 2023 (but with effectiveness as of January 3, 2022) ("Effective Date"). This Agreement includes, is subject to, and incorporates herein by reference: (a) the above Order Form, (b) any Order Forms subsequently entered into by the Parties which, to the extent required by applicable law, has been approved by the Court (this clause supersedes § 2.2 of the Terms and Conditions to the extent of any conflict), (c) all Addendums attached hereto, as applicable (each, an "Addendum"), and (d) and Elementus' standard Terms and Conditions, which are attached hereto (the "Terms and Conditions"). The Terms and Conditions contain, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the Parties after the date hereof. Elementus and Customer are each referred to herein as a "Party" and together, the "Parties". Capitalized terms not defined in this Order Form shall have the meanings ascribed to them in the Terms and Conditions or Addendums, as applicable. Unless specifically modified in the Order Form, all terms in the Terms and Conditions shall remain unchanged and in full force and effect. In the event of any conflict between the Terms and Conditions and the terms of an Order Form, the Terms and Conditions shall control unless the Order Form states that a specific provision of the Terms and Conditions will be superseded by a specific provision of the Order Form.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused their duly authorized officers to execute this Agreement as a sealed instrument, as of the Effective Date.

ELEMENTUS INC.

By:

Name:

Title:

CUSTOMER

By:

Name:

Title:

TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS ("TERMS AND CONDITIONS") CAREFULLY BEFORE USING THE SERVICES OFFERED BY ELEMENTUS INC. ("ELEMENTUS"). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH ELEMENTUS WHICH REFERENCE THESE TERMS AND CONDITIONS (EACH, AN "ORDER FORM"), YOU ("CUSTOMER") AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS (TOGETHER WITH ALL ORDER FORMS AND APPLICABLE ADDENDUMS, THE "AGREEMENT") TO THE EXCLUSION OF ALL OTHER TERMS. IN ADDITION, ANY ONLINE ORDER FORM WHICH CUSTOMER SUBMITS VIA ELEMENTUS' STANDARD ONLINE PROCESS AND WHICH IS ACCEPTED BY ELEMENTUS SHALL BE DEEMED TO BE MUTUALLY EXECUTED. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. Definitions.

1.1 "Addendum" means one or more addendums for certain Services attached to an Order Form.

1.2 "Confidential Information" means to the extent previously, presently or subsequently disclosed by or for either Party (the "Disclosing Party") to the other Party (the "Receiving Party") all financial, business, legal and technical information of the Disclosing Party or any of its affiliates, suppliers, customers and employees that is (a) is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature, or (b) in the case of oral or visual disclosure is identified as confidential at the time of disclosure, or (c) under the circumstances should in good faith be considered to be confidential. Confidential Information includes, without limitation, information related to: research, product plans, products, developments, inventions, processes, designs, markets, business plans, agreements with third parties, services, customers, marketing or finances of either Party, the content or existence of any negotiations, and pricing. Notwithstanding the foregoing, the Services, Aggregate Data, Analyses, Feedback, and all pricing information set forth in an applicable Order Form, shall be deemed Confidential Information of Elementus without any need for designating the same as confidential or proprietary.

1.3 "Customer Data" means any data or other content or information provided, uploaded, or submitted by or on behalf of Customer or Debtors to Elementus in connection with the Services, and including, without limitation, the Public Customer Submissions (defined below).

1.4 "Documentation" means any official user guide, help information and other instructive documentation regarding the applicable Services that is delivered by Elementus to Customer in electronic or other form, if any, including any updates provided by Elementus from time to time. For the avoidance of doubt, Documentation shall not include website marketing materials or sales presentations.

1.5 "Intellectual Property Rights" means all rights of the following types, under the laws of any jurisdiction worldwide: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights; (b) trade secret rights; (c) trademark rights; (d) patent rights; (e) mask work, *sui generis* database rights, and industrial property rights; (f) other proprietary rights of every kind and nature; and (g) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the above.

1.6 "Platform" means the platform provided by Elementus to Customer to access and use via the internet, including any software, data, interfaces, tools, APIs, utilities, templates, forms, derivatives, improvements, enhancements, updates, patches and/or extensions related thereto.

1.7 "Services" means any products, services, and data made available by Elementus to Customer, including the Platform and Professional Services (if applicable), and specified in an Order Form mutually agreed upon by the Parties in writing.

2. Services.

2.1 **Free Services.** [Intentionally Omitted.]

2.2 **Order Forms.** This Agreement will be implemented through one or more written Order Forms. Upon mutual execution and, to the extent necessary, approval by the Court, each Order Form shall

be incorporated into and form a part of the Agreement. Subject to the terms and conditions of this Agreement, Elementus will use commercially reasonable efforts to provide Customer with the Services specified in an Order Form. Such Services may be subject to separate attached Addendums, as applicable. Any change to the terms of this Agreement within an Order Form or an Addendum will apply only to the Services described therein. Elementus may provide the Services directly, or indirectly using contractors or other third party vendors or service providers. For clarity, the Platform is provided on a remote software-as-a-service basis (as hosted by or on behalf of Elementus) and no code will be provided to Customer hereunder.

2.3 Access and Account Setup. Subject to the terms and conditions of the Agreement, Elementus will provide Customer with access privileges that permit Customer to access and manage its Platform account ("Customer Account") and access, analyze, and download Customer Data. The Platform may be accessed and used by a limited number of Customer users authorized in an Order Form (the "Authorized Users"). Customer is solely responsible for the activity that occurs on the Customer Account, and for keeping the Customer Account password secure. Customer may never use another person's user account or registration information for Elementus' Platform without permission. Customer shall be responsible for the acts or omissions of any person who accesses the Platform using passwords or access procedures provided to or created by Customer. Customer will use reasonable efforts to prevent any unauthorized use of the Platform, and will promptly notify Elementus in writing of any unauthorized use that comes to Customer's attention and provide all reasonable cooperation to prevent and terminate such use.

2.4 Customer Responsibilities and Cooperation. Customer acknowledges that provision of the Services may require the reasonable cooperation of Customer personnel, as may be requested by Elementus from time to time including, without limitation, Customer shall: (a) provide Elementus access to its various Customer Data sources as reasonably requested by Elementus in order to provide the Services; (b) carry out all other Customer responsibilities set out in this Agreement and within an applicable Order Form in a timely and efficient manner, and Elementus may adjust any agreed timetable or delivery schedule as reasonably necessary in the event of any delays in Customer's provision of such assistance as agreed by the Parties; and (c) ensure that Authorized Users use the Platform and the Documentation in accordance with the terms and conditions of this Agreement. Customer shall be responsible for any Authorized User's breach of this Agreement.

2.5 Support Services. Provided that Customer is in compliance with the terms and conditions of this Agreement, Elementus shall use commercially reasonable efforts to make the Platform available twenty-four (24) hours a day, seven (7) days a week. Technical support will be available from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, excluding Federal holidays.

2.6 Modifications and Adjustments; Beta Versions. Elementus shall have no obligation under this Agreement or otherwise to provide any updates, patches, or enhancements. Elementus may in its sole discretion modify, enhance or otherwise change the applicable Services, provided that Elementus shall use commercially reasonable efforts to notify Customer in advance of any material changes that may materially adversely impact Customer's access to the Services. In the event that Elementus provides Customer with access to any beta, free trial, demonstration, pre-release or similar versions of the Services (as may be indicated on the Services or otherwise by Elementus), then (a) Customer acknowledges that such Services are experimental in nature, are provided "AS IS", and may not be functional on any machine or in any environment, and (b) Elementus' obligations pursuant to Sections 2.6 (Support Services), 5.1 and 5.2 (Warranties), and 8.1(a) (Indemnification) shall not apply to such services.

2.7 Professional Services. To the extent an Order Form specifies any professional services ("Professional Services") to be provided by Elementus, such Professional Services shall be subject to the terms set forth on an applicable Addendum attached to such Order Form.

2.8 Third Party Content and Third Party Services.

(a) Third Party Content. Customer acknowledges and agrees that the Services may use, display or post information, material, text, graphics, data, articles, photos, images, illustrations, or other content provided by third parties ("Third Party Content"). Third Party Content is the sole responsibility of the person from whom such Third Party Content originated, and Customer accesses all such Third Party Content at its own risk. Elementus is not liable for any errors or omissions in that Third

Party Content or for any damages or loss Customer might suffer in connection with it. Elementus cannot control and has no duty to take any action regarding how Customer may interpret and use the Third Party Content or what actions Customer may take as a result of having been exposed to the Third Party Content, and Customer hereby releases Elementus from all liability for Customer having acquired or not acquired Third Party Content through the Services.

(b) **Third Party Services.** Customer acknowledges and agrees that the Services may operate on, with or using application programming interfaces (APIs), browser extensions and/or other services operated or provided by third parties, or may otherwise contain links or connections to third-party websites or services that are not owned or controlled by Elementus ("**Third Party Services**"), including without limitation through integrations or connectors to such Third Party Services that are provided by Elementus. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services (including any Customer Data or other information relating thereto) and for complying with any applicable terms or conditions thereof. Elementus is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services. Elementus does not make any representations or warranties with respect to Third Party Services or any third party providers. When Customer accesses Third Party Services, Customer accepts that there are risks in doing so, and that Elementus is not responsible for such risks. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions. Elementus has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any Third Party Services or by any third party that Customer interacts with through the Services, and Customer agrees that Elementus shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. If there is a dispute between participants on the Services, or between users and any third party, Customer agrees that Elementus is under no obligation to become involved. In the event that Customer has a dispute with one or more other users, Customer releases Elementus, its directors, officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or the Services.

3. **Proprietary Rights.**

3.1 **License to Services.** Subject to Customer's compliance with all the terms and conditions of this Agreement (including any limitations and restrictions set forth on the applicable Order Form), Elementus grants Customer a limited, personal, non-exclusive, non-transferable, non-sublicensable right and license during the Term to use and access the Platform solely for Customer's internal business purposes in accordance with the Documentation.

3.2 **License Restrictions.** Customer shall not, and shall not permit any third party to, directly or indirectly: (a) use any of Elementus' Confidential Information or Services to create any service, software, documentation or data that is similar to or competes with any aspect of the Services; (b) decompile, disassemble or reverse engineer the Platform, or otherwise attempt to discover the source code, object code, logic, process or underlying methodology, structure, ideas or algorithms of the Platform, or related trade secrets, or any software, documentation or data related to the Platform, except to the extent this provision is expressly prohibited by statutory law; (c) copy, distribute, modify or create any derivative work of the Platform (or any portion thereof), provided that nothing in this clause (c) shall restrict the Customer from creating derivative works information and reports delivered to Customer; (d) encumber, market, sublicense, publish, distribute, reproduce, resell, assign, transfer, rent, lease, sublicense, loan, or otherwise permit third parties to use the Platform (or any portion thereof); (e) use the Platform (or any portion thereof) for commercial time-sharing or service-bureau use, for the benefit of a third party, or for any purpose other than its own internal use (with it being understood that use of the Platform in connection with the Case shall be deemed to be internal use by the Customer); (f) remove or otherwise alter any proprietary notices or labels from the Services or any portion thereof; (g) violate applicable local, state, national and foreign laws, treaties and regulations (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws); (h) infringe or violate any third party intellectual property, contractual or other proprietary rights; (iii) use or interact with the Services in a manner that is dangerous, harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable; (i) jeopardize the security of the Customer Account or anyone else's account (such as allowing someone else to log in to the Platform as Customer); (j) attempt, in any manner,

to obtain the password, account, or other security information from any other user; (k) violate the security of any computer network, or cracks any passwords or security encryption codes; (l) run Maillist, Listserv, any form of auto-responder or "spam" on the Platform, or any processes that run or are activated while Customer is not logged into the Platform, or that otherwise interfere with the proper working of the Platform (including by placing an unreasonable load on the Services' infrastructure); or (m) use or interact with the Services in a manner that "crawls," "scrapes," or "spiders" any page, data, or portion of or relating to the Services (through use of manual or automated means). Customer is responsible for all of Customer's activity in connection with the Services, including but not limited to uploading Customer Data onto the Services.

3.3 Limited License. Except for the limited rights and licenses expressly granted to Customer herein, no other license is granted, no other use is permitted, and Elementus shall retain all rights, title and interests (including all proprietary and Intellectual Property Rights) in and to the Services, including all ideas, concepts, inventions, systems, data, platforms, software, interfaces, tools, utilities, templates, forms, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information that are used by Elementus in providing the Services, and all trademarks, tradenames, or logos of Elementus, and all rights to patent, copyright, trade secret and other proprietary or Intellectual Property Rights. Notwithstanding the foregoing, any reports and deliverables provided by Elementus to Customer shall be the property of the Customer.

3.4 Customer Data. Customer hereby grants to Elementus a worldwide, non-exclusive, non-transferable and non-sublicensable, royalty-free license to use, copy, access, process, reproduce, perform, display, modify, distribute, transmit, operate, maintain and prepare derivative works of the Customer Data for the purpose of providing the Services to Customer as set forth in this Agreement. Customer shall retain all rights, title and interests (including all proprietary and Intellectual Property Rights) in and to the Customer Data.

3.5 Aggregate Data. [Intentionally Omitted.]

3.6 Feedback. All Customer suggestions for correction, change or modification to the Services, evaluations, benchmark tests, and other feedback, information and reports provided to Elementus hereunder (collectively, "Feedback"), will be the property of Elementus and Customer shall and hereby does assign any rights in such Feedback to Elementus. Customer agrees to assist Elementus, at Elementus' expense, in obtaining intellectual property protection for such Feedback, as Elementus may reasonably request. Feedback shall be subject to the confidentiality provisions of this Agreement.

3.7 Privacy. This Agreement incorporates Elementus' privacy policy located on Elementus website ("Privacy Policy"), but in the event there is a conflict between the Privacy Policy and this Agreement, the terms of this Agreement shall prevail. To the extent that, in connection with the Services, the Parties agree to enter into a Data Processing Addendum ("DPA") to this Agreement, the terms of such DPA are hereby fully incorporated into this Agreement by reference.

4. Payments and Taxes.

4.1 Fees. Unless otherwise set forth on an Order Form, Customer agrees to pay, and shall pay, the fees set forth on an applicable Order Form ("Fees") on a monthly basis within ten days following submission of a reasonably detailed invoice which complies with the requirements of the Court; provided that, during such time as the Case is continuing, the Fees shall be billed and paid in accordance with the order of the Court with respect to the retention of Elementus. All payments shall be made in U.S. dollars in immediately available funds, and are non-refundable. Any amounts not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less. Elementus reserves the right to change Fees from time to time in accordance with its practices for its customers generally, but subject to advance written notice to Customer.

4.2 Taxes. Customer shall pay any sales, use, value-added, property, and other taxes, withholdings and similar charges based on or arising from this Agreement (other than taxes based on Elementus' net income).

4.3 Expenses. Customer will reimburse Elementus for reasonable pre-approved travel and living expenses incurred by Elementus in performing Services at sites other than Elementus facilities at Customer's request (including without limitation, any Services relating to setup, training, technical support,

and consulting).

5. **Warranties and Disclaimers.**

5.1 **Mutual.** Each Party represents and warrants that: (a) such Party is duly organized, validly existing, and in good standing under the laws of the state of its organization, and has the full power and authority to enter into and perform its obligations under this Agreement; (b) the execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder do not and will not violate any other agreement to which such Party is a Party or by which it is otherwise bound; (c) when executed and delivered by such Party and, in the case of the Customer, approved by the Court, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (d) each Party will comply with all applicable laws, rules, and regulations in connection with performance of such Party's obligations under this Agreement.

5.2 **Elementus.** Elementus warrants to (and only to) Customer that (a) the Platform will materially perform in accordance with the applicable Documentation for the Term; and (b) any Services performed by Elementus hereunder will be performed in a professional and workmanlike manner, in accordance with general industry standards. In the event that the Services fail to satisfy this warranty, Elementus will, at its own expense, as Customer's sole and exclusive remedy, either: (i) promptly replace the Platform with a solution that materially conforms to the Documentation; (ii) promptly repair the Platform so that they materially conform to the Documentation; or (iii) if Elementus cannot promptly repair or replace the Platform as provided for in (i) or (ii) herein, Elementus may terminate this Agreement.

5.3 **Customer.** Customer represents and warrants to Elementus that Customer owns all rights, title and interest in and to the Customer Data and Customer Materials (as defined in an Addendum for Professional Services, as applicable), or that Customer has otherwise secured all necessary rights in the Customer Data and Customer Materials as may be necessary to permit the access and use thereof as contemplated by this Agreement.

5.4 **DISCLAIMERS.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES (OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION ANY CONTENT CONTAINED ON OR ACCESSED THROUGH THE SERVICES), ELEMENTUS MATERIALS (AS DEFINED IN AN ADDENDUM FOR PROFESSIONAL SERVICES, AS APPLICABLE), DELIVERABLES (AS DEFINED IN AN ADDENDUM FOR PROFESSIONAL SERVICES, AS APPLICABLE), AND ALL RELATED INFORMATION, TECHNOLOGY, AND SERVICES PROVIDED BY OR ON BEHALF OF ELEMENTUS ARE PROVIDED "AS IS," "AS AVAILABLE," AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND ELEMENTUS EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF ADVISED OF THE PURPOSE), ACCURACY, TITLE, AND/OR NON-INFRINGEMENT. ELEMENTUS WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY, OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES OR ANY CLAIMS, ACTIONS, SUITS PROCEDURES, COSTS, EXPENSES, DAMAGES OR LIABILITIES ARISING OUT OF USE OF, OR IN ANY WAY RELATED TO CUSTOMER'S PARTICIPATION IN, THE SERVICES. IN ADDITION, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, ELEMENTUS DOES NOT WARRANT THAT ACCESS TO THE SERVICES (OR ANY PORTION THEREOF) WILL BE UNINTERRUPTED OR ERROR FREE, THAT THE SERVICES (OR ANY PORTION THEREOF) WILL MEET CUSTOMER'S NEEDS, OR THAT DATA WILL NOT BE LOST, OR THAT THE PLATFORM (OR ANY PORTION THEREOF) IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE SERVICES (OR ANY PORTION THEREOF, INCLUDING ANY INFORMATION OR CONTENT ACCESSED ON CONNECTION THEREWITH) ARE ACCURATE, COMPLETE, OR UP-TO-DATE.

6. **Term, Termination, Effect of Termination, and Survival.**

6.1 **Term.** This Agreement shall commence on the Effective Date set forth in the applicable Order Form and, unless earlier terminated as provided herein, shall continue for the remainder of the Term. Order Forms will terminate upon termination of this Agreement unless otherwise mutually agreed upon in writing by the Parties.

6.2 **Termination.** Either Party may terminate this Agreement on thirty (30) days' prior written notice if the other Party materially breaches any of the terms of this Agreement and such breach remains uncured thirty (30) days following such Party's receipt of the terminating Party's notice. Without limiting

the foregoing, Elementus may suspend or limit Customer's access to or use of the Services if (a) Customer's account is more than five (5) days past due, or (b) Customer's use of the Services results in (or is reasonably likely to result in) damage to or material degradation of the Services which interferes with Elementus' ability to provide access to the Services to other customers; provided that in the case of subsection (b): (i) Elementus shall use reasonable good faith efforts to work with Customer to resolve or mitigate the damage or degradation in order to resolve the issue without resorting to suspension or limitation; (ii) prior to any such suspension or limitation, Elementus shall use commercially reasonable efforts to provide notice to Customer describing the nature of the damage or degradation; and (iii) Elementus shall reinstate Customer's use of or access to the Services, as applicable, if Customer remediates the issue promptly following receipt of such notice.

6.3 Effect of Termination and Survival. Upon termination or expiration of this Agreement for any reason: (a) Customer's access to the Services shall immediately terminate and all licenses granted hereunder shall immediately terminate; (b) Customer shall return and make no further use of any equipment, property, Documentation and other Confidential Information and items (and all copies thereof) belonging to Elementus; (c) Elementus may destroy or otherwise dispose of any of Customer Data in its possession (other than the Public Customer Submissions) unless Elementus receives, no later than ten (10) days after the date of termination, a written request for the return of Customer Data to Customer. The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 3, 4 (to the extent there are outstanding payments), 5.4, 6.3, 7 through 10 (inclusive), as well as any provisions regarding proprietary rights and restrictions set forth on an applicable Addendum.

7. LIMITATION OF LIABILITY. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 3.2, IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, DATA, OR DATA USE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY RELATED TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (B) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), (C) ANY THIRD PARTY SERVICES OR THIRD PARTY CONTENT USED WITH THE SERVICES, OR (D) ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO ELEMENTUS HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER. THE FOREGOING LIMITATIONS FORM AN ESSENTIAL BASIS FOR THIS AGREEMENT AND SHALL SURVIVE REGARDLESS OF THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE.

8. Indemnification.

8.1 Elementus.

(a) Indemnity. Except as provided below, Elementus agrees to (i) defend Customer against any finally adjudicated claim by a third party that the Services infringe a valid US patent (issued as of the Effective Date), or any copyright or trade secret, of such third party; and (ii) indemnify Customer for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) finally awarded and arising out of such claim. If the Services become or, in Elementus' opinion, are likely to become the subject of any injunction preventing its use as contemplated herein, Elementus may, at its option (A) obtain for Customer the right to continue using the Services or (B) replace or modify the infringing portions of the Services so that it becomes non-infringing without substantially compromising its principal functions. If (A) and (B) are not reasonably available to Elementus, then it may (C) terminate this Agreement upon written notice to Customer and refund to Customer the Fees for the Services that were pre-paid for the then-current term, pro-rated for the remainder thereof. The foregoing states the entire liability of Elementus, and Customer's exclusive remedy, with respect to any actual or alleged violation of Intellectual Property Rights by the Services, any part thereof or its use or operation. Notwithstanding anything else, Elementus will have no obligation under this Section 8.1(a) with respect to Free Services.

(b) Exclusions. Elementus shall have no liability or obligation hereunder with respect to any claim based upon (i) any use of the Services not strictly in accordance with this Agreement or in an application or environment for which it was not designed or contemplated; (ii) any Customer Data or

Customer Materials; (iii) modifications, alterations, combinations or enhancements of the Services not created by or for Elementus; (iv) any portion of the Services that implements Customer's requirements; (v) Customer's continuing allegedly infringing activity after being notified thereof or its continuing use of any Services after being provided modifications that would have avoided the alleged infringement; or (vi) any Intellectual Property Rights in which Customer or any of its affiliates has an interest.

8.2 **Customer.** Customer agrees to defend Elementus against any claim by a third party that is related to (a) Elementus' authorized use of any Customer Data or Customer Materials; (b) Customer's use of the Services or breach of this Agreement or any representation, warranty, covenant or other agreement made herein; and (c) claims excluded under Section 8.1(b), and to indemnify Elementus for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claims.

8.3 **Process.** The Party seeking indemnification (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") in writing of any claim for which it seeks indemnification hereunder; provided that the failure to provide such notice shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The Indemnifying Party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (a) the Indemnifying Party shall keep the Indemnified Party informed of, and consult with the Indemnified Party in connection with the progress of such litigation or settlement, and (b) the Indemnifying Party shall not have any right, without the Indemnified Party's written consent (which consent shall not be unreasonably withheld), to settle any such claim in a manner that does not unconditionally release the Indemnified Party. At the Indemnifying Party's request, the Indemnified Party will provide reasonable cooperation with respect to any defense or settlement.

9. **Confidentiality.** Each Party shall treat as confidential all Confidential Information of the other Party, shall not use such Confidential Information except as set forth in this Agreement, and will not disclose such Confidential Information to any third party except as expressly permitted herein without the Disclosing Party's written consent. The Receiving Party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the Disclosing Party's Confidential Information, but in no event less than reasonable care. The Receiving Party shall promptly notify the Disclosing Party of any actual or suspected misuse or unauthorized disclosure of any of the Confidential Information. In the event of any termination or expiration of this Agreement, each Receiving Party will either return or, at the Disclosing Party's request, destroy the Confidential Information of the other Disclosing Party; provided however, that each Receiving Party may retain copies of the Disclosing Party's Confidential Information for routine backup and archival purposes subject to the confidentiality obligations set forth herein. Notwithstanding the foregoing, the obligations set forth in this Section 9 shall not apply with respect to any information to the extent that it is: (a) already rightfully in the possession of the Receiving Party without restriction prior to the first disclosure hereunder as shown by records or files; (b) is already or becomes generally available to the public after the time of disclosure other than as a result of any improper action by the Receiving Party; (c) was rightfully disclosed to Receiving Party by a third party without restriction; or (d) is independently developed by the Receiving Party without use of the Confidential Information from Disclosing Party. The Receiving Party may make disclosures required by law or court order provided that, if practicable, the Receiving Party provides adequate notice and assistance to the Disclosing Party for the purpose of enabling the Disclosing Party to prevent and/or limit the disclosure. Notwithstanding the foregoing, either Party may disclose the terms of this Agreement pursuant to due diligence requests in a proposed merger, acquisition, or financing transaction.

10. **General Provisions.**

10.1 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing, addressed to the applicable Party at its address set forth in this Agreement, and shall be deemed effectively delivered only: (a) upon personal delivery, (b) upon delivery by a courier service as confirmed by written delivery confirmation, (c) upon delivery by facsimile or email as confirmed by transmission receipt, or (d) three (3) business days after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid. Either Party may change its address for notice by giving notice to the other Party in accordance with this section. A copy of any required notice must be sent via email delivery to notices@elementus.io (if to Elementus) or to Customer's email set forth

on an Order Form (if to Customer).

10.2 Dispute Resolution. Except with respect to claims for injunctive or other equitable relief, which may be brought at any time before any court of competent jurisdiction, all disputes arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in English in New York, New York, USA, in accordance with the Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Service, Inc. ("JAMS") then in effect, by an arbitrator selected in accordance with said JAMS' rules. Judgment upon the award so rendered may be entered in a court having jurisdiction. Notwithstanding the foregoing, the Court shall have sole and exclusive jurisdiction over any such disputes for so long as the Case is continuing.

10.3 Governing Law, Jurisdiction, Venue, and Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties hereby agree that exclusive jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in New York, New York having jurisdiction over Elementus' offices, and both Parties consent to the jurisdiction of such courts with respect to any such action, provided that, for so long as the Case is continuing, the Court will have sole and exclusive jurisdiction, and shall be the exclusive venue, for any such actions. In any action or proceeding to enforce this Agreement, the prevailing Party will be entitled to recover from the other Party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

10.4 Force Majeure. Other than for payment of money, a Party shall be excused from any delay or failure in performance hereunder due to any labor dispute, government requirement, internet congestion or breakdown, epidemic or pandemic, or any other cause beyond its reasonable control. Such Party shall use commercially reasonable efforts to cure any such failure or delay in performance arising from such a condition, and shall timely advise the other Party of such efforts.

10.5 Relationship of the Parties. The relationship between the Parties shall only be that of independent contractors. Neither Party is an agent, representative, partner, employer, or employee of the other Party, and neither Party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

10.6 Third Party Beneficiaries. This Agreement is entered into solely between, and may be enforced only by, Customer and Elementus. This Agreement will not be deemed to create any rights in third parties or to create any obligations of a Party to any third parties.

10.7 Remedies. Except as specifically provided otherwise herein, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each Party agrees that, in the event of any breach or threatened breach of Section 3 or 9, the non-breaching Party may suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching Party shall be entitled to seek injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

10.8 Publicity. Each Party grants the other Party a limited, non-transferable (except to the extent this Agreement is transferred by either Party in accordance with Section 10.9), non-exclusive license to include such Party's name and standard logo within marketing and promotional materials, provided such materials are approved in writing by the other Party prior to public distribution or dissemination. Notwithstanding the foregoing, without further approval, Elementus may use and display Customer name and logo on Elementus' website and other materials solely for the purposes of identifying Customer as a customer.

10.9 Assignment. A Party shall not assign nor transfer any obligations or benefit under this Agreement without the written consent of the other Party, provided that: (a) without the other Party's consent, a Party may assign or transfer this Agreement freely without restriction to an affiliated entity or to a successor to substantially all of its business or assets to which this Agreement relates (whether by sale of assets or equity, merger, consolidation or otherwise); and (b) Elementus may utilize subcontractors in the performance of its obligations hereunder. Any purported transfer or assignment in violation of this section is void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of

the Parties and their successors and assigns.

10.10 Entire Agreement. This Agreement, together with its exhibit(s) and applicable Order Forms and Addendums, is the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, and all prior and contemporary proposals and discussions relating to the subject matter of this Agreement, and controls over the preprinted terms of any purchase order or similar document. In the event of any conflict between the terms of these Terms and Conditions, the terms of an Order Form, or the terms of an applicable Addendum, the order of precedence shall be as follows: (a) the terms of these Terms and Conditions; (b) the applicable Addendum; and (c) the terms of an Order Form. This Agreement may be executed in counterparts, electronically or by facsimile signatures, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. No modification or amendment of any provision of this Agreement shall be effective unless agreed by both parties in writing, and no waiver of any provision of this Agreement shall be effective unless in writing and signed by the waiving Party; provided that if Customer is a user of Free Services, then Elementus may amend or modify this Agreement by (a) posting a new version of this Agreement at on Elementus website and (b) providing notice to Customer via email or other reasonable means. The failure of either Party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

10.11 Severability. If any provision of this Agreement is determined to be unenforceable, that provision will be replaced with the valid one that most closely achieves the Parties' intent and the remainder of this Agreement will remain enforceable.

10.12 Counterparts; Headings. This Agreement may be executed in counterparts, each of which shall be deemed an original agreement for all purposes and which collectively shall constitute one and the same agreement. The headings in this Agreement are for convenience only and may not be used to interpret or construe the terms hereof.

ADDENDUM A
ELEMENTUS PROFESSIONAL SERVICES ADDENDUM

1. **Incorporation.** The Parties agree that this Elementus Professional Services Addendum (the "Elementus Professional Services Addendum") applies to Professional Services, if any, that are made the subject of an Order Form. This Elementus Professional Services Addendum is incorporated into, becomes a part of, and is subject to the terms of the Agreement to the extent the Professional Services are made available by Elementus to Customer and specified in an Order Form mutually agreed upon by the Parties in writing. Unless otherwise indicated in this Elementus Professional Services Addendum, all terms of the Agreement shall apply to any agreements requiring the Professional Services as defined herein. If any capitalized term in this Elementus Professional Services Addendum is defined in the Agreement, then the definition provided in the Agreement shall apply to that term throughout this Elementus Professional Services Addendum except as the definition of that term may be specifically modified by this Elementus Professional Services Addendum. Any conflict of terms as between this Elementus Professional Services Addendum and the Agreement shall be governed by the terms contained in the Agreement, unless this Elementus Professional Services Addendum states that a specific provision of the Agreement will be superseded by a specific provision of this Elementus Professional Services Addendum.

2. **Definitions.**

2.1 "Change Order" means a written request for revisions with respect to the Professional Services set forth in an Order Form.

2.2 "Deliverables" means deliverables or work product expressly set forth in an Order Form and created specifically for Customer in connection with the Professional Services. Deliverables expressly exclude Elementus Materials.

2.3 "Elementus Material" means (a) all software, software interfaces software updates and changes, tools, designs, documentation, data, information, ideas, inventions and other material owned or developed by or for Elementus prior to or outside of the scope of this Agreement as may be necessary to provide the Professional Services hereunder; (b) any routines, tools, methodologies, processes, know-how or technologies created, adapted or used by Elementus in its business generally, together with all associated Intellectual Property Rights, not specially developed for Customer; and (c) derivatives, improvements, or modifications of the foregoing. For the avoidance of doubt, Elementus Materials include, without limitation, the Platform, Aggregate Data, Analyses, Feedback and any Confidential Information of Elementus.

3. **Services.**

3.1 Professional Services. As set out in an Order Form, and subject to the terms of the Agreement, including this Elementus Professional Services Addendum, Elementus shall take commercially reasonable efforts to provide the Professional Services to Customer. The specific details of the Professional Services to be performed will be determined on a per-project basis, and the details for each project will be described in an Order Form.

3.2 Change Orders. Unless otherwise specified in an Order Form, Customer may reasonably request a Change Order. Within ten (10) business days after Elementus' receipt of the Change Order, Elementus will deliver to Customer a written, revised Order Form reflecting Elementus' reasonable determination of the revised Professional Services, deliverables, delivery schedule, payment schedule, and adjusted fees or fee estimates, if any, that will apply to the implementation of the revisions. If Customer approves the revised Order Form, then the Parties will execute it, and upon execution, the revised Order Form will supersede the then-existing Order Form. If Customer does not approve the revised Order Form within ten (10) business days after its receipt by Customer, the then-existing Order Form will remain in full force and effect, and Elementus will have no further obligation with respect to the applicable Change Order.

4. **Fees.** [Intentionally Omitted.]

5. **Licenses and Proprietary Rights.**

5.1 **Customer Materials.** Customer grants to Elementus and its subcontractors a nonexclusive, royalty-free, worldwide right and license during the Term of this Agreement to use, reproduce, perform, display, transmit, operate, maintain, modify and prepare derivative works of any

materials provided by Customer to Elementus ("Customer Materials") for use by Elementus as required to perform the Professional Services. As between the Parties, Customer will continue to own the Customer Materials.

5.2 **Inventions.** Except as expressly set forth to the contrary in an Order Form, all works of authorship, inventions, discoveries, improvements, methods, processes, formulas, designs, techniques, and information conceived, discovered, developed or otherwise made by Elementus, solely or in collaboration with others: (a) in the course of performing the Professional Services; or (b) that form all or part of a deliverable provided as part of the Professional Services, whether developed as part of the Professional Services or separately, but excluding Customer Materials (as defined in Section 5.1 herein) (collectively, "Inventions"), is and will remain the sole property of Elementus.

5.3 **License Grant.** Upon and subject to final payment by Customer of all Fees owing to Elementus, Elementus hereby grants to Customer a nonexclusive, perpetual, worldwide, royalty-free license to use, copy, modify, and prepare derivative works of the Inventions solely for purposes of Customer's internal business operations only. The rights granted to Customer in this Section 5 are not assignable or transferable, by operation of law or otherwise, without the advance written consent of Elementus. Any assignments or transfers in violation of this Section 5 will be void.